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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1290

GREAT WESTERN BROADCASTING CORPORATION
d/b/a, KXTV, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

BRIEF OF THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION AS AMICUS CURIAE, IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

AUTHORITIES CITED

CASES:	Page
Great Western Broadcasting Corp. v. *N.L.R.B.*, 356 F. 2d 434 (C.A. 9)	2
N.L.R.B. v. *Fruit & Vegetable Packers and Warehousemen, Local 760 (Tree Fruits)*, 377 U.S. 58	2
N.L.R.B. v. *Servette, Inc.*, 377 U.S. 46	2, 3
STATUTE:	
National Labor Relations Act. (29 U.S.C. 158)	2

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This brief is filed with the consent of the parties pursuant to Rule 42 of this Court.

Interest of the Amicus Curiae

The American Newspaper Publishers Association is a membership corporation organized and existing under the laws of the State of New York. Its membership consists of the publishers of 978 daily

and/or Sunday newspapers, whose publications represent more than 90% of the total daily and Sunday circulation of newspapers published in this country. This *Amicus Curiae* and its members are vitally interested is an issue presented in this case, namely, whether advertising in communications media is a "product" which may be "distributed" by an advertiser, within the meaning of the publicity proviso to Section 8(b)(4) of the National Labor Relations Act.

Reasons for Granting the Writ

Advertising is the economic lifeblood of newspapers and other mass communications media. Therefore, secondary boycotts against advertisers would have a significant adverse influence not only upon media, including newspapers, but on the free dissemination of information. Accordingly, the decision of the Court below is of vital importance to the newspaper business.

Congress recognized that secondary boycotts are an unfair economic weapon in a labor dispute, in its enactment of Section 8(b)(4) of the National Labor Relations Act. But as this Court pointed out in *N.L.R.B.* v. *Fruit & Vegetable Packers and Warehousemen, Local 760 (Tree Fruits)*, 377 U.S. 58, 70, certain constitutional considerations led to the adoption of the publicity proviso.

It is respectfully submitted that in holding that the publicity proviso of Section 8(b)(4) permits a labor union having a dispute with a television station employer to apply economic pressures against the station's advertisers, the Court below has misinterpreted the decision of this Court in *N.L.R.B.* v. *Servette, Inc.*, 377 U.S. 46. The Court below recognized that its decision results in an incongruity. 356 F. 2d at page 436.

Nevertheless, it reversed its earlier decision solely on the basis of its interpretation of *Servette.*

If the decision of the Ninth Circuit is allowed to stand, it would appear to be applicable to all communications and advertising media, including newspapers.

This *Amicus* respectfully submits that advertising included in the pages of a newspaper in no manner can be deemed a "product" which is "distributed" by its respective advertisers. If a newspaper publisher has a "product" within the meaning of the Act, it is the newspaper itself. Advertisers, however, do not distribute the newspaper.

If advertising in communications media can be deemed a "product" which is "distributed" by the advertiser, it is difficult to visualize any form of business relationship which would not satisfy the conditions of the publicity proviso, and the sanctions established by Congress against secondary boycotts would become almost meaningless. If labor unions having disputes with communications media are free to threaten or coerce advertisers, then media have no protection whatever against secondary boycotts, which frequently are more damaging then the underlying primary labor dispute. If the decision of the Court below is allowed to stand, labor unions would be privileged to attack and destroy media with which they may have disputes by threatening and coercing their advertisers, thereby nullifying the Congressional mandate against secondary boycotts.

Accordingly, it is a matter of grave importance to the newspaper business, as well as to other communications media, that this Court grant certiorari herein.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition of Great Western Broadcasting Corporation for a writ of certiorari be granted.

Respectfully submitted,

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